IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1075 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PUNJABHAI MAGANBHAI PATEL

Versus

BECHARBHAI MULJIBHAI PATEL

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Appearance:

1. Civil Revision Application No. 1075 of 1999

MR PRAKASH THAKKAR FOR DG CHAUHAN for Petitioner No. 1

MR TARESH J BHATTJI for Respondent No. 1

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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 19/04/2002

ORAL JUDGEMENT

Heard Mr. Prakash Thakkar, learned advocate for Mr. Chauhan for petitioner and Mr. Bhattji, learned advocate for the respondent. The present revision application is filed by the petitioner-original defendant

challenging the order passed by the learned 3rd Extra Assistant Judge, Vadodara dated 6th May, 1999 in Civil Misc. Appeal No. 87/99 filed by the petitioner, wherein, the Appellate Court has on examining the order passed by the learned trial Judge below application Ex. 5 has dismissed the appeal of the petitioner-defendant. During the hearing I was taken through the order passed by the appellate Court, which is under challenge. As found from the said order, the Appellate Court has while examining the contentions raised before him as well as while examining the order under challenge, has observed that the trial Court has rightly accepted the case put forward by the plaintiff in respect of the possession of the suit vada. Further that, if the injunction is not granted, the plaintiff would suffer irreparable loss and injury and accordingly, dismissed the appeal and confirmed the order passed below application Ex. 5.

2. This revision application is pending since 1999 and for the first time on 19th March, 2001, the Court has issued Rule and issue notice as to interim relief, which was made returnable on 27th April, 2001. Thereafter, though the matter was notified from time to time before the Court, the same could not be heard. On going through the order passed below application Ex.5, an application for seeking injunction against the defendant was in respect of the suit wada i.e. Gabhan of the plaintiff and the plaintiff has prayed that the defendant be restrained not to trespass over the said wada till the out come of the suit. The written statement filed by the petitioner - defendant is at Ex. 29, wherein, the defendant has contended that the suit filed by the plaintiff is not tenable and the pedigree given by the plaintiff is not correct as the suit wada is in possession of the defendant and is being used by him for the purpose of storying the agricultural implements and for the purpose of tying the cattles. It is the case of the petitioner-defendant that the entire wada was mutated in the name of Lilabhai Narottambhai and Motibhai Kalabhai Patel in the panchayat record and the portion, which was in possession of Lilabhai, was sold to one Bhikhabhai Nathabhai and 1/2 portion of the land case to the share of Motibhai Kalabhai, who is the defendant's grant father and the said 1/2 portion of the whole wada came to the share of the defendant's father Maganbhai and after the death of Maganbhai 1/2 portion of the whole wada came into the possession of the defendant. The trial Court after considering the case put forward by the parties, has accepted the case of the plaintiff and granted injunction.

4. An affidavit-in-reply is filed in this proceedings by the respondent by annexing certain documents to establish that he is in possession of the suit land and claimed that in fact he is in possession of the wada. He has also annexed the document i.e. saledeed dated 23rd April, 1959 between Patel Bhikhabhai Nathabhai and Nathabhai Lilabhai.

5. As found from the order-sheet, at the time of issuing Rule, the Court has issued notice regarding interim relief, which was made returnable on 27.4.2001. Thereafter, matter was adjourned from time to time. When the matter was notified before me for considering the prayer for interim relief, Mr. Bhattji, learned advocate for the respondent-plaintiff has vehemently urged that as per the findings recorded by the learned trial Judge, the possession of the wada is established to the plaintiff and both the courts have accepted the case of the plaintiff that he is in possession of the said wada and hence it is the submission that petitioner is not entitled for relief by way of interim relief prayed in respect of the suit wada.

6. Without expressing anything on the contentions raised before me and in view of the concurrent findings recorded by the courts below, this court is of the view, it will be in the interest of justice to direct the learned trial Judge to dispose of said suit, which is of the year 1998 finally. The counsel appearing in the matter has also assured me that if such direction is given for early disposal of the suit, the parties will cooperate with the trial Court to enable the trial court to dispose of the suit in accordance with law. Accordingly, trial court is directed to dispose of the suit as early as possible, however, not later then 30th October, 2002 in accordance with law and the parties are directed to maintain status-quo till the out come of the suit. The learned trial Judge while deciding the suit, will not influence in respect of the order passed during the pendency of the suit as well as by the Appellate Court in respect of granting injunction. Accordingly, revision application is disposed of with no costs. Rule is accordingly, disposed of. Office is directed to issue writ to the trial court forthwith.

(D.K.Trivedi,J.)
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